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TN ATTORNEY GENERAL  
FINANCIAL DIVISION

IN THE DAVIDSON COUNTY CHANCERY COURT,  
IN NASHVILLE, TENNESSEE

SENTINEL TRUST COMPANY, and its Directors, Danny  
N. Bates, Clifton T. Bates, Howard H. Cochran,  
Bradley S. Lancaster, and Gary L. O'Brien *Petitioners*

No. 04-1934-I

v.

KEVIN P. LAVENDER, Commissioner  
Tennessee Department of Financial Institutions

*Respondent*

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Motion for Expedited Hearing  
on Petition for *Supersedeas*

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Petitioners respectfully move the Court to specially set their Petition for the Writ of *Supersedeas*, on an expedited basis, within the shortest period of days that the Court can hear the same, for the following reasons:

- 1<sup>st</sup>: The sworn petition for *certiorari*, on the basis of which the writ was issued and has been served, proves an overwhelming probability that the Respondent Commissioner's actions in the premises will be held illegal because (i) his own single claim of authority to act is based solely upon particular statutory powers given him to take extraordinary actions against only one type of entity, a state bank, based upon the unique attributes of the banking business, and Petitioner Sentinel Trust Company is not a bank, and has none of the characteristic attributes of a bank (ii) Respondent Commissioner's powers cannot be enlarged merely by his

unsupported claim of such powers by published edict, to empower him to exercise the same destructive powers over all other types of non-bank entities subject to his administrative regulatory power, to the extent of such powers as have been granted to him in relation to different non-banking businesses; (iii) his declared purpose and objectives in petitions and orders, issued by him for national publication, is to destroy the Petitioner Sentinel Trust Company by liquidating its business, which, if successful, would defeat the exercise of *certiorari* jurisdiction and would render it impossible to reassemble Sentinel's business, even though the law gives him absolutely no power to perform such actions; and (iv) despite his knowledge that the writ has been issued, and the legality of his entire course of action seriously contested, Respondent Commissioner is moving utmost speed to solicit bids for Petitioner's entire business from other trust companies and/or from banks with fiduciary powers.

2<sup>nd</sup>: In Respondent's headlong rush to destroy Petitioner's corporate business and existence with all deliberate speed, neither Respondent nor his counsel, the Attorney-General of Tennessee, has enunciated any rationale based upon statutory construction of the Tennessee Banking Act, which would tend to vest him with the powers he has seized and is exercising.

3<sup>rd</sup>: Although the statutes authorizing involuntary State liquidation of **banks**—on statutory bases that could have no reason for application to the totally different business of a trust company existing only to perform fiduciary functions—require the Commissioner of Financial Institutions, after himself taking destructive actions against **banks**, to present certain of his limited decisions for approval or disapproval of the chancery court of the county in which the bank is located, the exercise of such power of approval has been held not to be an adjudication, they do not involve any commencement or conduct of litigation, and in such limited

proceedings in which the Respondent Commissioner has sought approval by the Lewis County Chancery Court, the Attorney-General has conceded, in agreement with Petitioner's position, that the Lewis County Chancery Court has no subject-matter jurisdiction to adjudge the legality of the Respondent Commissioner's acts to be reviewed by this Court in its *certiorari* jurisdiction, including his acts of seizing Petitioner Sentinel's properties, its bank accounts, and *de facto* seizing and exercising its appointive and contractual powers as trustee, registrar of bonds, and transfer agent.

4<sup>th</sup>: Even aside from the absence of any statute vesting Respondent with such seizure and related powers that he has exercised, the pretended basis of his complaint, being a charge that Sentinel Trust Company has violated its fiduciary obligations, is a subject-matter wholly outside his administrative and policing authority, being governed instead by the general laws on Fiduciaries and Trust Estates, T.C.A. §§ 35-1-101, *et seq.*, under which trust beneficiaries alone (here, bond holders, the equitable owners of funds distributed to them by Petitioner under about 100 separate bond indentures) are given standing to commence proceedings against indenture trustees such as Petitioner.

5<sup>th</sup>: Unless the writ of *supersedeas* shall be issued promptly to nullify the Respondent Commissioner's past illegal acts, he soon will have succeeded in destroying Sentinel Trust Company.

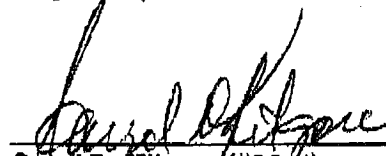
In support of this motion, Petitioner relies upon proof of actions committed and positions taken by Respondent Commissioner, as shown by transcripts of proceedings in the Lewis County Chancery Court before the Honorable R. E. Lee Davies, Circuit Judge, copies of which are filed as Exhibits A and B hereto.

In additional support of this motion, there is appended hereto the affidavit of Petitioner's

attorney, authenticating copies of various papers establishing the actions of Respondent Commissioner and his stated intent to take further actions, as well as summarizing aspects of the proceedings before Judge Davies for temporary reference pending receipt of the transcripts.

In further support of this motion, Petitioner files herewith the affidavit of its president, Danny N. Bates, Exhibit C hereto, relating to the attempted conduct of Sentinel's business under the receivership, the ineptitude thereof, and the urgency of need for nullification of the Commissioner's arbitrary and illegal orders by *Supersedeas*, so that its business may again be operated by its knowledgeable staff pending final determination of the issues as to the legality of Respondent Commissioner's actions in decision of the issues pursuant to the writ of *certiorari* heretofore issued and served.

Respectfully submitted,



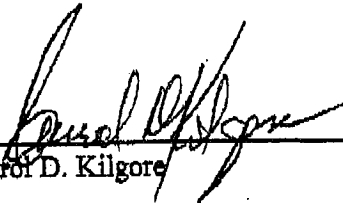
Carol D. Kilgore (#2544)  
227 Second Avenue, North  
Nashville, Tennessee 37201-1693  
(615) 254-8801  
*Attorney for Petitioner and Movant*

#### CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing notice of filing has been mailed this July 8<sup>th</sup>, 2004, postage prepaid, to the following:

JANET M. KLEINFELTER, ESQ.  
Financial Division  
Attorney-General of Tennessee  
425 Fifth Avenue, North  
Nashville, Tennessee 37243.

with **NOTICE**: That the foregoing motion will be presented before the Davidson County Chancery Court, Part I, in Nashville, Tennessee, at 9:00 a.m. on June 30, 2004, or as soon thereafter as the parties may be heard, and with **FURTHER NOTICE**: That if no response is timely filed and served, the Motion is subject to being granted and counsel need not appear in Court at the time and date scheduled for the hearing.

  
\_\_\_\_\_  
Carol D. Kilgore

STATE of TENNESSEE            )  
  )  
COUNTY of DAVIDSON        )

Personally appeared before me, a Notary Public for the above State and County, the undersigned Carol D. Kilgore, who, after being duly sworn according to law, deposed and said:

1. I am an adult resident of the State of Tennessee, licensed to engage and engaged in the practice of law in Nashville, Tennessee, representing Sentinel Trust Company in reference to its dispute with the Tennessee Commissioner of Financial Institutions, and make the affidavit as to matters of formality as to which there can be no dispute.

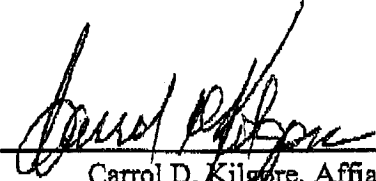
2. The Exhibits hereto are or accurate copies of the originals, **Exhibit A** being a copy of the transcript of June 30, 2004 proceedings before the Lewis County Chancery Court as received by me from the Court Reporter, **Exhibit B** being a copy of the transcript of July 12, 2004 hearing in the same Court as transmitted to me by the Court Reporter by E-mail and printed out in my office, and **Exhibit C** being a duplicate original of an affidavit, the other original of which was filed with the

Lewis County Chancery Court in the course of the July 12, 2004 hearing.

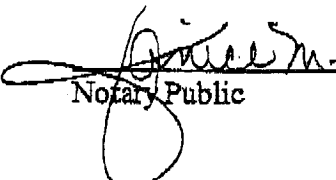
3. As established by the Exhibit C affidavit, the "Exhibit A" attachment is a correct copy of a letter I wrote to the Commissioner of Financial Institutions on July 7, 2004, after first checking with the Tennessee Board of Professional Responsibility as to the propriety of writing such letter directly to a public official, insisting that he show legal authority for his claimed power to utilize trust funds for receivership purposes and otherwise treat them as assets of the trustee corporation, Sentinel, rather than assets of the bondholders. Although my letter plainly referenced the Commissioner's duty to obey the law in making his own discretionary decisions before submitting them to the Lewis County Chancery Court for approval or disapproval, the only response thereto received to this date has been by a letter from a staff attorney of July 8, 2004, whose responsive sentence was, "Therefore, any arguments you have in opposition to the Receiver's Motion to pay expenses out of the 'pooled' account held at SunTrust Bank should properly be addressed to the Lewis County Chancery Court."

After my aforesaid letter was written, as demonstrated by the transcript of the July 12 Lewis County hearing, the Receiver's attorney reported that adequate Sentinel Trust funds had been found to pay current expenses, so as to modify his motion referenced in the said staff attorney's July 8 letter, but the Commissioner and Receiver still continue to claim power to use the trust funds as if they were Sentinel Trust Company's own property.

Further, Affiant saith not.

  
Carrol D. Kilgore, Affiant

Sworn to and subscribed before me this  
16th day of July, 2004.

  
Notary Public

